

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of

Acceleration of Broadband Deployment  
Expanding the Reach and Reducing the Cost  
of Broadband Deployment by Improving  
Policies Regarding Public Rights of Way and  
Wireless Facilities Siting

WC Docket No. 11-59

**REPLY COMMENTS OF THE CITY OF AGOURA HILLS**

The City of Agoura Hills, California (the “City”) files these reply comments in response to the Notice of Inquiry (NOI), released April 7, 2011, in the above-entitled matter. In comments filed by “PCIA – the Wireless Infrastructure Association” (PCIA), dated July 18, 2011, PCIA asserted in its Exhibit B.II that the City of Agoura Hills was a “jurisdiction where the collocation process was overly burdensome because of application requirements,” to wit, that the City of Agoura Hills had in place a temporary moratorium on wireless telecommunications facilities.<sup>1</sup>

The City does not belong on PCIA’s list because (1) the City’s temporary moratorium did not impose overly burdensome collocation application requirements, (2) the temporary moratorium was specifically permitted by state law and not preempted by the Federal Telecommunications Act of 1996 (the “Telecommunications Act”), and (3) as of this filing, the temporary moratorium has been rescinded and is no longer in effect. For all of these reasons, the City should not have been included on PCIA’s list.

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<sup>1</sup> The use of the term “wireless telecommunications facilities” in the City’s temporary moratorium was inclusive of “personal wireless services facilities” as that term is used in 47 USC § 332.

**I. The City Properly Invoked A Temporary Moratorium Under California State Law To Engage in Land Use Planning For Wireless Telecommunications Facilities**

In 2009, the City experienced an influx of applications for wireless communication facilities, reflecting a growing increase in demand for wireless services with additional data transmitting capacity. At that time, the City did not have a modern wireless telecommunications ordinance. Instead, the Agoura Hills Municipal Code conditionally permitted such facilities in only two zoning districts. No development or design standards for such facilities were specified in the Code. It became evident that the City regulations regarding wireless telecommunications facilities were insufficient to address the growing need for such facilities.

On October 14, 2009, the City Council adopted an interim urgency zoning ordinance to establish a temporary moratorium on the approval of permits for wireless telecommunications facilities in the City. The purpose of the temporary moratorium was to allow the City sufficient time to determine what regulations should apply to wireless telecommunication facilities without new facilities being installed in the interim that might conflict with the new ordinance. As will be discussed in the next section, California state law specifically permits such a temporary moratorium.

At the time the temporary moratorium was enacted, the City received no comments from the wireless industry objecting to adoption of the temporary moratorium. Neither did the City receive any industry objections when additional public hearings were held extending the temporary moratorium. There were approximately twenty (20) permitted wireless telecommunications facilities in the City when the temporary moratorium was enacted. The wireless telecommunications industry was not a stranger to the City and was aware of the City's legislative process.

The temporary moratorium did not apply to any applications that were submitted prior to its enactment date. Although new permits could not be approved for applications submitted after the enactment date, the City's temporary moratorium ordinance explicitly stated that the City would accept and process new applications for wireless telecommunications facilities, mitigating any potential impact of the temporary moratorium. Additionally, wireless providers were permitted to repair, maintain and replace existing facilities during the temporary moratorium. As further evidence that the temporary moratorium had no negative impact on wireless service providers, no new applications were filed with the City during the temporary moratorium.

As of this filing, the City has adopted a modern wireless telecommunications facilities ordinance and repealed the temporary moratorium. The resulting ordinance balances the need for broadband infrastructure with its impact on City residents, businesses and visitors. It protects the public's interests by mitigating impacts caused by wireless telecommunications facilities, while providing greater opportunities for wireless service providers to install both new and collocated wireless telecommunications facilities.

## **II. Land Use Moratoria Are Specifically Permitted by California State Law and Are Not Preempted by Federal Law**

California State law specifically permits a city to adopt as an urgency measure an interim ordinance prohibiting uses which may be in conflict with a zoning code amendment the City is considering.<sup>2</sup> To adopt such a temporary moratorium, the City Council must find that it is necessary to "protect the public safety, health, and welfare."<sup>3</sup> The temporary moratorium requires a four-fifths vote of the City Council.

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<sup>2</sup> Cal. Gov't Code § 65858.

<sup>3</sup> Cal. Gov't Code § 65858(a).

As the California Supreme Court noted, moratoria play an important role in land use planning:

It is a matter of common knowledge that a zoning plan of the extent contemplated in the instant case cannot be made in a day. Therefore, we may take judicial notice of the fact that it will take much time to work out the details of such a plan and that obviously it would be destructive of the plan if, during the period of its incubation, parties seeking to evade the operation thereof should be permitted to enter upon a course of construction which might progress so far as to defeat in whole or in part the ultimate execution of the plan.<sup>4</sup>

In sum, a temporary moratorium is good public policy because it permits good planning. The expansion of broadband is a competing public policy, but cannot be allowed to run roughshod over public policies promoting good planning. After all, the citizens of our community must live with the impact of each wireless telecommunications facility for the life of the facility. Further, safeguards are imposed under California law to protect developers – including wireless service providers – to balance the need for good planning with the right of private parties to develop their facilities. These safeguards include limits on the time period that a temporary moratorium may be in place, restrictions on re-enacting a temporary moratorium with regards to the same property, and before enacting a temporary moratorium, certain public health, safety and welfare findings must be made.

The type of temporary moratoria permitted under California State law is not preempted by federal law. The Telecommunications Act preserved local zoning authority over personal

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<sup>4</sup> *Miller v. Board of Public Works of City of Los Angeles* (1925) 195 Cal. 477, 496.

wireless services facilities.<sup>5</sup> Because a city's temporary moratorium under California law may be as short as 45 days,<sup>6</sup> a temporary moratorium on its face does not conflict with federal law requirements to act upon a request to place, construct or modify personal wireless services facilities within a reasonable period of time. In this case, the City's temporary land use moratorium did not unreasonably delay any wireless provider's request, as none were filed with the City during the time the temporary moratorium was in effect.

### **III. Conclusion**

For all the above reasons, the City requests that the FCC disregard PCIA's inclusion of the City of Agoura Hills on PCIA's Exhibit B.II. The City's temporary moratorium did not impose overly burdensome collocation application requirements. The City's temporary moratorium has been repealed and a new wireless telecommunications ordinance is in effect. No wireless provider objected to the temporary moratorium and broadband deployment was not affected by it.

Respectfully submitted,

**City of Agoura Hills, California**

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<sup>5</sup> 47 USC 332(c)(7).

<sup>6</sup> Cal. Gov't Code § 65858(a).